

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-38-I

Date: 4 November 2020

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Pre-Trial Judge

Registrar: Mr. Abubacarr Tambadou

Decision of: 4 November 2020

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**DECISION ON URGENT MOTION FOR IN-PERSON VISITS
BETWEEN FÉLICIEN KABUGA AND HIS DEFENCE COUNSEL**

Office of the Prosecutor:

Mr. Serge Brammertz

Duty Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

I, **IAIN BONOMY**, Judge of the Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Pre-Trial Judge in this case;¹

RECALLING that Mr. Félicien Kabuga was transferred to the Mechanism on 26 October 2020 and that, according to information provided by the Registry to Kabuga’s Duty Counsel, Mr. Emmanuel Altit (“Counsel”), Kabuga is presently detained at the Judicial Centre for Somatic Care (“JCvSZ”) under the custody of the United Nations Detention Unit (“UNDU”) at the Hague Branch for a detailed medical assessment;²

BEING SEISED OF a confidential and *ex parte* urgent motion filed by the Defence on 30 October 2020, wherein the Accused requests that measures be taken so that he and his Counsel can meet in-person at the UNDU,³ which he contends is necessary to: (i) prepare for the initial appearance; (ii) discuss his plea; and (iii) discuss the evidence supporting the indictment;⁴

NOTING Kabuga’s submissions that in-person visits are essential for him to effectively exercise his fair trial rights,⁵ on the basis that: (i) access to a lawyer is a fundamental right⁶ and should primarily mean physical access, especially as Kabuga does not know how to make video-teleconference (“VTC”) calls and has difficulty to use a telephone autonomously;⁷ (ii) the organization of in-person meetings should be possible and the COVID-19 pandemic does not justify the violation of Kabuga’s rights, considering, *inter alia*, that his Counsel tested negative to COVID-19 and that derogations to quarantine requirements are practicable;⁸ and (iii) in the intervals between in-person meetings, VTC meeting sessions should be facilitated;⁹

¹ See Order Designating a Pre-Trial Judge, 29 October 2020, p. 1. See also Order Assigning a Trial Chamber, 1 October 2020, p. 1.

² See Preliminary Order Regarding Medical Examination of Félicien Kabuga, 29 October 2020, p. 1; *Requête urgente de la Défense afin que soient prises les mesures nécessaires à l'organisation de rencontres en personne entre Félicien Kabuga et son équipe de Défense, de façon à ce que Félicien Kabuga puisse exercer réellement et effectivement le droit dont il dispose d'avoir accès à un avocat.*, 30 October 2020 (confidential and *ex parte*, with confidential and *ex parte* annexes A to C) (“Motion”), Annex C, Registry pagination (“RP.”) 152. See also Decision on Félicien Kabuga’s Motion to Amend the Arrest Warrant and Order for Transfer, 21 October 2020, paras. 11-18.

³ Motion, p. 9.

⁴ Motion, para. 18.

⁵ Motion, para. 20.

⁶ Motion, paras. 29-31.

⁷ Motion, paras. 21-28.

⁸ Motion, paras. 32-41.

⁹ Motion, paras. 42, 43.

NOTING that the Defence further contends that there is no reason to prevent physical access to Kabuga since visits remain possible at the UNDU, noting that representatives of the Registry held an in-person meeting with Kabuga on 30 October 2020 regarding his legal representation;¹⁰

NOTING that the Commanding Officer of the UNDU indicated in written exchanges with Counsel that the Accused is currently in quarantine at the JCvSZ, that he is able to call Mr. Altit on a privileged basis, and that the Registry is making efforts to ensure that VTC meetings will be held once Counsel is authorized to access the Mechanism premises;¹¹

CONSIDERING that in-person visits at the UNDU are currently suspended to help protect the vulnerable detainee population from the risks of COVID-19¹² and that, in line with the Defence request that Kabuga be temporarily transferred to The Hague for medical reasons,¹³ I deem it necessary to uphold the highest standards of health protocol;

CONSIDERING that the arrangements made by other detention facilities with respect to in person visits from counsel do not necessarily call into question the Registrar's decision to apply a different standard in the context of this pandemic, having taken into account the particular circumstances of the detainees at the UNDU;

CONSIDERING that the fact that Kabuga is in contact with personnel authorized to be at the UNDU in accordance with its safety protocols to ensure the safe administration of his detention and to provide information on his right to legal assistance¹⁴ is exceptional and essential to induction at the facility and cannot justify receiving outside visitors, including counsel, especially where other reasonable accommodations can be made to minimize risk presented by additional personnel entering the UNDU;

CONSIDERING that, in view of the need to hold the initial appearance without delay, operational requirements necessitate that the quarantine requirement set by the Policy on Access to Mechanism

¹⁰ *Communication urgente au Juge de la mise en état d'un nouvel élément d'information concernant l'accès à Félicien Kabuga au centre de détention de Scheveningen*, 2 November 2020 (confidential and *ex parte*, with confidential and *ex parte* Annexe A) ("Supplementary Submission"), paras. 14-16, Annex A, RP. 178.

¹¹ Motion, Annex C, RP. 152, 151.

¹² Motion, paras. 5, 9, Annex A, RP. 164, 163, Annex B, RP. 158, Annex C, RP. 151; Supplementary Submission, paras. 5, 8. I recall that Rule 71(2) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism (adopted on 5 November 2018) provides that the Commanding Officer "may impose restrictions or conditions including monitoring on visits or communications, if he or she considers that this is necessary for the administration of justice, the security and good order of the Detention Unit or the health or safety of any person."

¹³ See Urgent Defence Motion for Félicien Kabuga's Transfer to The Hague and Not to Arusha, 9 October 2020 (original French version filed on 5 October 2020) (confidential, with confidential Annex A; public redacted version filed on 5 October 2020).

¹⁴ See Supplementary Submission, Annex A, RP. 178.

Premises for Travelers not be applied to Mr. Altit, who following arrival in the Netherlands tested negative to COVID-19,¹⁵ and that he should be granted immediate access the Mechanism premises to consult with his client via VTC, so long as he limits his movements on the premises and adheres to all other safety standards and protocols;

CONSIDERING that the need to protect the health and safety of Kabuga and other detainees at the UNDU in the context of a pandemic warrant the reasonable restrictions at this stage on in-person visits between Kabuga and his Counsel and that allowing communications through telephone calls and VTC on a privileged basis sufficiently protect Kabuga's fair trial rights as set forth in Article 19(4)(b) and (d) of the Statute of the Mechanism;

CONSIDERING that the Registry should ensure that Kabuga, given his particular circumstances and age, be able to communicate in a privileged fashion with his Counsel in the most effective form while he is present in The Hague, and provide him with such practical assistance as may be required;

CONSIDERING that Kabuga's inability to operate a VTC is immaterial as it is the Registry's responsibility to establish the secure connection and to ensure that the communication is private and privileged and that, if this proves not possible, to inform me so that other arrangements can be made;

CONSIDERING FURTHER that the Registry should ensure that, on the date of the initial appearance to be set shortly, Kabuga should have access to his Counsel for a reasonable period of time before the hearing to allow in-person consultation in accordance with safety protocols and subject to any medical recommendations;

FINDING that there is no basis to order further relief at this stage;

FOR THE FOREGOING REASONS,

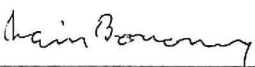
DISMISS the Motion; and

AUTHORIZE Mr. Altit to have immediate access to the premises of the Hague Branch of the Mechanism to consult with his client via VTC, subject to safety standards and protocols in place.

¹⁵ See Motion, paras. 14, 40.

Done in English and French, the English version being authoritative.

Done this 4th day of November 2020,
At Arusha,
Tanzania



Judge Iain Bonomy
Pre-Trial Judge

[Seal of the Mechanism]



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